

### **REMARKS**

Claims 1, 6, 9, 11, and 11 stand rejected under 35 U.S.C. 102(b) as being anticipated by Reference B3 as illuminated by Reference C1. Claims 2 and 10 stand rejected as obvious – B3 and Perry (Engineer's Handbook). Claim 7 stands rejected as obvious – B3 and U.S. Patent No. 6,190,106.

Applicant objects to the use of C1, because that document was created on October 12, 2001. While it does refer to information received prior to that date, it is unclear what the nature of that information was or if it was prior art.

Notwithstanding Applicant's objection, Applicant believes that Claims 1-3 and 5 – 10 are neither anticipated by nor obvious in view of References B3 and C1, for the reasons set forth below.

Reference B3 discloses a process in which oil and gas waste is moved to a site that has caliche on the ground. A caliche pit is dug and the oil and gas waste is dumped directly on the ground. At one point in B3, Osage claimed they would store the oil and gas waste in buried tanks, but corrected that in a January 6, 2000 letter. In the same letter, Osage describes the benefits of immediate mixing of the oil and gas waste with the caliche (ground) on which the oil and gas waste sits. Finally, there is no post-processed waste storage in isolation disclosed.

Applicant's claimed invention, as amended, requires receiving and storing, above ground, in isolation, the oil and gas waste material. Following the receipt and storage of the oil and gas waste material, an oil aggregate mix is formed by combining the oil and gas waste material with a quantity of aggregate, which comes from a second site. The claimed invention is done without

contamination of the ground at the third site (site of storage and mixing of the oil and gas waste material from a first site and the aggregate from a second site).

Perry illustrates prior art screw conveyor, '106 excavators.

Applicant also requires an impervious layer, manmade (Claim 6), which will prevent contamination of the ground surface during the mixing step. Indeed, the storing of the oil and gas waste must be isolated from the obtaining step at the first site, all the way through to the creation of the road base.

Osage has found that the non-storage of water and the immediate mixing with the caliche provides for more beneficial road base, contrary to the claimed stored/isolated mixing method. Osage stated they were going to store the oil and gas waste in underground steel tanks, but, in the January 6, 2000 letter (part of B3), state (though some of this is hard to read):

“As the waste is brought to our facility, it will be mixed immediately on the receive ramps and stockpiled until it is ready to be placed into the final recycling process. By mixing the material in this manner, we are able to produce a higher grade road base.”

Thus, it is believed to teach away from isolation and storage of the oil and gas waste.

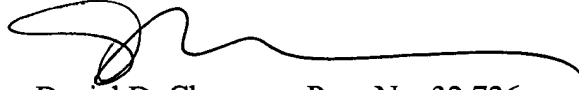
As to Claim 2, it is not believed that there is a binder that will prevent leachate from the road base material suggested in B3.

As to the provisional rejection under the obviousness type double patenting over the '410 application, Applicant asks if the Examiner will hold such rejection in abeyance until consideration of this response.

In view of the above, Applicant respectfully requests reconsideration.

Thank you for your reconsideration.

Respectfully submitted,  
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Date: Apr. 15 '05



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